

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Krista Kano	Team: Team # 2	CCRB Case #: 201306539	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 07/17/2013 8:01 PM	Location of Incident: Ralph Avenue and Bainbridge Street	Precinct: 81	18 Mo. SOL 1/17/2015	EO SOL 1/17/2015	
Date/Time CV Reported Thu, 07/18/2013 5:48 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 07/18/2013 5:49 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Raymond Hernandez	01074	953965	PBBN
2. POM Jonathan Molina	17327	953123	PBBN
3. POM Manuel Mancheno	26266	954091	PBBN
4. POM Mark Xylas	11251	948160	081 PCT
5. POM Ross Garner	21542	949007	081 PCT
6. POM Ryan Galvin	08096	948997	081 PCT
7. An officer			
8. Officers			

Officer(s)	Allegation	Investigator Recommendation
A.POM Ross Garner	Force: PO Ross Garner used physical force against § 87(2)(b)	
B.POM Ross Garner	Abuse: PO Ross Garner searched § 87(2)(b) bag.	
C.POM Ross Garner	Abuse: PO Ross Garner searched the car in which § 87(2)(b) was an occupant.	
D.POM Ryan Galvin	Abuse: PO Ryan Galvin searched the car in which § 87(2)(b) was an occupant.	
E.POM Mark Xylas	Abuse: PO Mark Xylas searched the car in which § 87(2)(b) was an occupant.	
F.POM Jonathan Molina	Abuse: PO Jonathan Molina searched the car in which § 87(2)(b) was an occupant.	
G.POM Manuel Mancheno	Abuse: PO Manuel Mancheno searched the car in which § 87(2)(b) was an occupant.	
H.POM Raymond Hernandez	Abuse: PO Raymond Hernandez searched the car in which § 87(2)(b) was an occupant.	
I.POM Ryan Galvin	Abuse: PO Ryan Galvin searched § 87(2)(b) bag.	

Officer(s)	Allegation	Investigator Recommendation
J. Officers	Abuse: Officers searched § 87(2)(b) § 87(2)(b) s and § 87(2)(b) s bags.	
K. An officer	Abuse: An officer threatened to arrest § 87(2)(b) § 87(2)(b) and § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		

Case Summary

On July 18, 2013, § 87(2)(b) filed a complaint using the CCRB's website (encl. 3A-3H).

On July 17, 2013, § 87(2)(b) drove his friends home from Rockaway Beach. Officers stopped him at Ralph Avenue and Bainbridge Avenue in Brooklyn and issued him summonses for § 87(2)(b). The following allegations resulted:

- **Allegation A—Force: PO Ross Garner used physical force against § 87(2)(b)**
- **Allegation B—Abuse of Authority: PO Garner searched § 87(2)(b) bag.**
§ 87(2)(g)
- **Allegation C—Abuse of Authority: PO Ross Garner searched the car in which § 87(2)(b) was an occupant.**
- **Allegation D—Abuse of Authority: PO Ryan Galvin searched the car in which § 87(2)(b) was an occupant.**
§ 87(2)(g)
- **Allegation E—Abuse of Authority: PO Mark Xylas searched the car in which § 87(2)(b) was an occupant.**
- **Allegation F—Abuse of Authority: PO Jonathan Molina searched the car in which § 87(2)(b) was an occupant.**
- **Allegation G—Abuse of Authority: PO Manuel Mancheno searched the car in which § 87(2)(b) was an occupant.**
- **Allegation H—Abuse of Authority: PO Raymond Hernandez searched the car in which § 87(2)(b) was an occupant.**
§ 87(2)(g)
- **Allegation I—Abuse of Authority: PO Ryan Galvin searched § 87(2)(b) bags.**
§ 87(2)(g)
- **Allegation J—Abuse of Authority: Officers searched § 87(2)(b) § 87(2)(b) s and § 87(2)(b) s bags.**
- **Allegation K—Abuse of Authority: An officer threatened to arrest § 87(2)(b) and § 87(2)(b)**
§ 87(2)(g)
- § 87(4-b) § 87(2)(g)

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a 6'2" tall, 155-pound black man with black hair and brown eyes. He was § 87(2)(b) old at the time of the incident.

CCRB Statement

On July 29, 2013, § 87(2)(b) provided a phone statement (encl. 4A) and on August 19, 2013, he was interviewed at the CCRB (encl. 4E-4F). § 87(2)(g)

On July 17, 2013 around 8 p.m., § 87(2)(b) drove home from Rockaway Beach in Queens with his friends, § 87(2)(b), § 87(2)(b) and § 87(2)(b) in his green Jeep Cherokee. § 87(2)(b) sat in the front passenger seat, and § 87(2)(b) and § 87(2)(b) sat in the backseat. The passengers drank alcohol at the beach, but § 87(2)(b) did not. § 87(2)(b) was smoking a cigarette and threw the butt out the window. Her feet were out of the window. § 87(2)(b) smoked a cigar.

Near Ralph Avenue and Bainbridge Avenue in Brooklyn, a black unmarked sedan driving behind him flashed its lights, so § 87(2)(b) pulled over. There were no sirens. PO1 approached the driver side and PO2, identified by the investigation as PO Ryan Galvin, approached the passenger side. PO1 was a 5'9" tall, husky Hispanic man with short black hair and a dark skin tone in his mid-30s. He wore a black t-shirt and jeans. PO1 matched PO Mark Xylas's description, but was identified by the investigation as PO Ross Garner. PO Galvin was a 6'2" tall white man with dirty blond hair in his early 30s. He wore a white shirt and jeans.

PO Garner told § 87(2)(b) to get out of the car, so § 87(2)(b) put the car in park and took off his seatbelt. [In his phone statement, § 87(2)(b) said that the officers yelled at him to get out of the car and that he tried to pull his car over to the side of the road. PO Galvin reached through the passenger window and pulled the keys out of the ignition.]

PO Garner opened the door, grabbed § 87(2)(b) arm and pulled him forcefully out of the car. PO Garner pulled § 87(2)(b) to the back of the car. Four uniformed male officers stood behind the unmarked car. PO Garner slammed § 87(2)(b) on the back of his truck and handcuffed him.

§ 87(2)(b) asked why he was being arrested and PO Garner told him that it was because someone in the back had thrown a cigarette butt out of the window and that someone's legs were out of the window. PO Garner said that they followed § 87(2)(b) for two blocks trying to get his attention. § 87(2)(b) told him that as soon as he saw the lights, he pulled over.

PO Garner asked for § 87(2)(b) ID. Officers instructed the passengers to get out of the car and collected their IDs. § 87(2)(b) asked PO1 if he could get his ID in his car and PO Garner said no. PO Garner went to the back of the jeep, grabbed § 87(2)(b) backpack out of the open trunk,

opened it, took out the wallet, and took out the ID. There were no outstanding warrants and the IDs were returned. PO Garner told § 87(2)(b) to sit on another civilian's parked car.

PO Garner, PO Galvin, and the four uniformed officers searched § 87(2)(b) car for about an hour. They went into his backseat and looked under the seats. From the backseat, they looked into the trunk and found a 1-liter bottle of Bacardi which was in a paper bag, in § 87(2)(b)'s beach bag, determined by the investigation to be § 87(2)(b)'s bag. Officers went into the center console. § 87(2)(b) did not see them look in any other compartments.

At some point, PO7, identified by the investigation as Lt. Thomas Passolo arrived. Lt. Passolo was a 5'8" to 5'9" tall, slim but muscular, bald Hispanic man in his mid-forties wearing a black shirt and jean shorts. Lt. Passolo told the officers to direct the passengers onto the sidewalk.

PO Garner un-cuffed § 87(2)(b) and told him to pull the car over. § 87(2)(b) did so and then PO Garner gave § 87(2)(b) two summonses: § 87(2)(b) and the other was for § 87(2)(b). The uniformed officers walked away, Lt. Passolo got into a marked car, and PO Garner and PO Galvin got into the unmarked car.

§ 87(2)(b) noted the officers' names and badge numbers. They included Hernandez (1074), Molina (17327), Mancheno (26266), Gardner (21542), and Xilus (1125). The officers were identified by the investigation as PO Raymond Hernandez, PO Jonathan Molina, PO Manuel Mancheno, PO Ross Garner, and PO Mark Xylas, respectively.

There were three witnesses, whom § 87(2)(b) did not know. One sent him a picture of the officers, one took a video, and the other was § 87(2)(b) identified by the investigation as § 87(2)(b). § 87(2)(b) received the photo, but not the video. He plans on filing a lawsuit against the city but has not yet obtained a lawyer.

Victim: § 87(2)(b)

Phone Statement

On September 10, 2013, § 87(2)(b) provided a phone statement (encl. 4L). § 87(2)(g)

The officers asked if they could search the car and § 87(2)(b) said no. The officers searched the car for about an hour and a half. The officers looked through everyone's bags and threatened to arrest them, so § 87(2)(b) wrote down the names and badge numbers of the four plainclothes officers and four to five uniformed officers.

Victim: § 87(2)(b)

Phone Statement

On September 17, 2013, § 87(2)(b) provided a phone statement (encl. 4M). § 87(2)(g)

Driving home, they noticed lights flashing behind them. § 87(2)(b) tried to pull over. There were cars parked on the street, so he had to keep going to find an empty spot on the side of the road. Before they were able to park, three plainclothes officers ran up to the driver's side. They reached into the driver's side and pulled § 87(2)(b) out of the car.

They asked § 87(2)(b) if he minded if they searched the car. § 87(2)(b) said that yes, he did mind. They searched the car and § 87(2)(b) told them that he did not give them permission. The officers said that if he wanted to do it the hard way the officers would take them all to the precinct.

Victim: § 87(2)(b)

Phone Statement

On September 23, 2013, § 87(2)(b) provided a phone statement (encl. 4N). § 87(2)(g)

On Ralph Avenue, they saw lights behind them. They stopped at a red light, and there was traffic so they could not pull over. Once the light turned green, § 87(2)(b) the driver, tried to pull over in an empty spot. Before he finished, three large men in plainclothes started yelling at § 87(2)(b) asking if he knew what the lights meant. § 87(2)(b) told them that he was trying to pull over. An officer, identified by the investigation as PO Galvin, reached through the passenger window and pulled out of the keys.

§ 87(2)(b) wrote down the officers' names and badge numbers. PO Xylas started yelling at her and said that if she wanted to do it the hard way, he would take everyone to the precinct. The officers saw an almost empty rum bottle in the trunk which was in three bags. They asked whose bottle it was, and § 87(2)(b) said it was hers. Someone else was issued a summons for § 87(2)(b).

Attempts to Contact Civilians

Between August 23, 2013 and October 8, 2013, § 87(2)(b) was called five times. She was sent please call letters on August 27, 2013 and September 10, 2013, which were not returned to the CCRB. On September 10, 2013, § 87(2)(b) confirmed contact information, provided and statement and scheduled an interview for September 17, 2013, which she missed. A missed appointment letter was sent that day and was not returned to the CCRB.

Between September 10, 2013 and October 8, 2013, § 87(2)(b) was called five times and sent two letters. On September 10, 2013, § 87(2)(b) confirmed contact information and provided a statement. He was asked to come to the CCRB to provide an official statement but said that he wanted to think about it and asked if he could call back. § 87(2)(b) was called four more times and sent two letters which were not returned to the CCRB.

Between September 23, 2013 and October 28, 2013, § 87(2)(b) was called twice, sent three letters, and missed two interviews. § 87(2)(b) was sent please call letters on August 27, 2013 and September 10, 2013 which were not returned to the CCRB. On September 23, 2013, § 87(2)(b) confirmed contact information, provided a statement and scheduled an interview for October 1, 2013, which she missed. A missed appointment letter was sent on October 2, 2013, which was not returned to the CCRB. § 87(2)(b) was called again on October 22, 2013 and she scheduled an interview for October 28, 2013, which she missed.

A search of the NYC Department of Correction database showed that § 87(2)(b) and § 87(2)(b) are not incarcerated.

§ 87(2)(b)'s brother, stated that § 87(2)(b) was studying abroad for the year and could not be contacted. § 87(2)(b) was not contacted.

NYPD Statements:

Subject Officer: PO RYAN GALVIN

- *PO Galvin is a 6'3" tall, 233-pound white man with blond hair and hazel eyes. He was § 87(2)(b) years old at the time of the incident.*
- *On July 17, 2013, PO Galvin worked from 11:30 a.m. until 8:05 p.m. He was assigned to Anti-Crime with PO Mark Xylas and PO Ross Garner. They were in plainclothes and were assigned to an unmarked vehicle, #8131, a black Impala.*

Memo book

At 8:30 p.m. while traveling northbound on Ralph Avenue, PO Galvin observed a green Jeep suburban on the intersection of Bainbridge Street traveling in the same direction. The rear left passenger had her left foot hanging out of the window and then threw a cigarette out of the window. The vehicle also did not have a center rearview mirror. They stopped the car and approached the car. The driver continued to keep the car in motion after PO Galvin and his partners identified themselves as officers. The driver refused a direct order to put the car in park and shut off the vehicle. PO Galvin reached across the passenger front window and took the keys out of the ignition. The vehicle almost ran over PO Galvin's foot. The driver was placed in handcuffs for the officers' safety. There was the odor of marijuana. The driver was § 87(2)(b) and his pedigree information was obtained. There were five people in the car. The lungable grabbable area of the vehicle was searched for a weapon. At 8:50 p.m., two summonses were issued to the driver for § 87(2)(b). Another summons was issued to a passenger for § 87(2)(b). Lt. Passolo was on scene (encl. 5A-5D).

Summonses

PO Galvin issued § 87(2)(b) a summons for § 87(2)(b). § 87(2)(b) stated to PO Galvin, "I didn't know you were police" (encl. 5E-5F).

CCRB Statement

On December 11, 2013, PO Galvin was interviewed at the CCRB (encl. 5I-5J).

At 8:30 p.m. on July 17, 2013, PO Galvin, PO Xylas, and PO Garner drove northbound on Ralph Avenue behind a green Jeep. The back left passenger's foot was out of the window. He smelled the odor of marijuana from the car, saw someone throw a cigarette out of the car and noticed that there was no rearview mirror. PO Galvin believed that the cigarette was a marijuana cigarette. The officers put on their lights and sirens and stopped the car at Bainbridge Street.

PO Galvin approached the passenger side and PO Xylas and PO Garner approached the driver side. The smell of marijuana became stronger as they approached the car. They identified themselves as police officers and their shields were displayed. The officers told § 87(2)(b) to put the car in park and shut off the vehicle.

§ 87(2)(b) pulled forward and almost ran over PO Galvin's foot. PO Galvin did not know if § 87(2)(b) was trying to park the car or drive away. PO Galvin reached into the car, across the front passenger and pulled the keys out of the ignition.

PO Xylas and PO Garner ordered § 87(2)(b) out of the vehicle. § 87(2)(b) did not reach for anything in the vehicle. PO Xylas and PO Garner physically removed § 87(2)(b) from the car, but PO Galvin did not see exactly how they grabbed him because he was on the other side of the car. PO Xylas and PO Garner immediately handcuffed § 87(2)(b) for their safety and directed him to the back of the car.

PO Galvin ordered the four passengers to exit the vehicle and go to the back of the car. They were compliant. PO Galvin did not slam § 87(2)(b) against the back of his car and did not observe PO Garner or PO Xylas do so. It is likely that PO Galvin, PO Xylas or PO Garner, instructed § 87(2)(b) to sit on his back bumper because that is what they usually do. PO Galvin did not observe any bulges on § 87(2)(b). The officers did not try to recover the cigarette they suspected to be a marijuana cigarette from the road because there were many cigarette butts in the road.

Impact foot post officers in the area approached the scene to observe. PO Galvin was shown photos of PO Raymond Hernandez, PO Jonathan Molina and PO Manuel Mancheno but they did not look familiar to him.

Because of the odor of marijuana, PO Galvin believed there may be marijuana in the car. He also thought that there may be a weapon in the vehicle because of the way § 87(2)(b) tried to drive after he was told to park and because he seemed nervous. PO Galvin, PO Xylas and PO Garner decided to search the car. PO Galvin looked in the lungable, grabbable areas in the backseat and the front passenger seat. PO Galvin recovered an open Bacardi bottle from the floor of the backseat. He did not recall how much liquid was still inside. The bottle was not in a bag.

PO Galvin also looked in the center console and the glove compartment. The car was a hatchback, so the trunk was quickly looked at to make sure they did not throw anything into the back. PO Galvin did not recall any bags in the backseat and did not recall searching any bags. He did not recall seeing PO Xylas or PO Garner enter any bags. He did not recall if they helped search the car. He did not recall if the Impact foot post officers participated in any way. Other than the bottle of Bacardi, nothing was recovered from the search.

Five to ten minutes into the interaction and towards the end of the vehicle search, Lt. Thomas Passolo arrived. They had not called for backup, but had put on the radio that they had a car stop. Lt. Passolo arrived in a marked car. PO Galvin did not recall if Lt. Passolo arrived alone or if he had an operator. They explained to Lt. Passolo what was occurring. PO Galvin did not see Lt. Passolo speaking to the driver or the passengers.

A crowd formed around the area. Someone in the crowd spoke to the occupants of the car and people yelled at the officers. PO Galvin did not remember what they said, but described the crowd as agitated. No one tried to intervene. PO Galvin wrote three summonses. No one was ever threatened with arrest.

Subject Officer: PO ROSS GARNER

- *PO Garner is a 6'1" tall, 210-pound white man with brown hair and brown eyes. He was § 87(2)(b) years old at the time of the incident.*
- *On July 17, 2013, PO Garner worked from 12 p.m. to 9 p.m. He had his partners, PO Ryan Galvin and PO Mark Xylas, were assigned to Anti-Crime and were in plainclothes. They were in vehicle #8131, a black unmarked car.*

Memo book

At 8:30 p.m., PO Garner observed a green Jeep with a New Jersey license plate traveling northbound on Ralph Avenue and Bainbridge Street. The back left passenger's feet were hanging out of the window and the back left passenger threw a lit cigarette into the street. The driver did not have a rearview mirror inside of the car. PO Garner approached the vehicle and identified himself as an officer. The driver continued to keep the vehicle in motion in traffic and refused a direct order to put the car in park and shut off the vehicle. The officers reached inside of the vehicle and removed the driver and keys from the ignition. The car was safely stopped without incident. The driver was handcuffed for officers' safety. At 8:50 p.m., three summonses were issued. The driver received two for § 87(2)(b)

§ 87(2)(b) The back left passenger, § 87(2)(b) was cited for § 87(2)(b) (encl. 5L-5O).

CCRB Statement

On December 12, 2013, PO Garner was interviewed at the CCRB (encl. 5R-5S). § 87(2)(g)

Only as PO Garner approached the vehicle, did he begin to smell the odor of marijuana. § 87(2)(b) § 87(2)(b) looked at PO Garner in a way that made PO Garner believe § 87(2)(b) wanted him to leave and did not want to stop. § 87(2)(b) started to drive away. PO Garner told him to stop the car at least five times. After advancing 10 feet, § 87(2)(b) stopped the car. PO Garner did not tell him to move the car.

Once § 87(2)(b) stopped the car, PO Garner saw that everyone in the car was moving. He did not remember what kinds of movements § 87(2)(b) or the passengers made. Later in the interview PO Garner described the movements as "furtive" but did not recall any specific movements made by any of the civilians. § 87(2)(b) did not reach for anything.

PO Garner instructed § 87(2)(b) to get out of the car at least three times, but § 87(2)(b) did not comply. PO Garner lightly put his hand on § 87(2)(b) arm and instructed him to get out of the car. As he did, § 87(2)(b) pulled back. PO Garner grabbed more forcefully on § 87(2)(b) arm and pulled him out of the car. § 87(2)(b) was immediately handcuffed, but PO Garner did not recall if he or another officer handcuffed § 87(2)(b)

PO Garner escorted him to the back of the car. § 87(2)(b) remained standing. PO Garner did not slam § 87(2)(b) on the back of his car and did not see PO Galvin or PO Xylas do so.

PO Garner decided to search the vehicle. PO Garner feared for his safety because § 87(2)(b) did not comply with his directions and made furtive movements. Another factor was the odor of marijuana. There were no other reasons to believe § 87(2)(b) was armed or dangerous. PO Garner did not remember if anyone was frisked.

PO Garner searched the grabbable, lunge-able areas of the Jeep. Because the vehicle was a hatchback, the grabbable lunge-able area included the trunk, but PO Garner did not remember searching the trunk. He leaned into the vehicle and looked around the driver's seat, the passenger seat and the backseat. He did not remember entering any compartments and did not remember looking under any of the seats.

PO Garner did not remember if PO Xylas or PO Galvin also searched the car. PO Garner did not recover the alcohol, did not see the alcohol, and did not remember who recovered it. He did not remember if the alcohol was removed from the vehicle, but said that it would have been. PO Garner did not remember any bags in the vehicle and did not remember searching any bags. He did not remember seeing PO Galvin or PO Xylas searching any bags. PO Garner did not recover anything from the search.

At some point, PO Garner requested § 87(2)(b) ID, which he provided. PO Garner did not remember from where § 87(2)(b) took his ID. PO Garner did not remember entering a bag to obtain § 87(2)(b) ID and did not know if PO Xylas or PO Galvin did. PO Garner did not threaten to arrest anyone and did not hear another officer do so.

Other than PO Garner, PO Galvin, PO Xylas, and Lt. Passolo, there were no other officers on the scene.

At some point by a canvass, it was determined that the littered object was a cigarette butt. PO Garner did not remember if he conducted the canvass or if another officer did. PO Garner wrote § 87(2)(b) a summons for § 87(2)(b) and § 87(2)(b) was issued summonses for § 87(2)(b) .

Subject Officer: PO MARK XYLAS

- *PO Xylas is a 6' tall, 250-pound white man with brown hair and hazel eyes. He was § 87(2)(b) old at the time of the incident.*
- *On July 17, 2013, PO Xylas worked Anti-Crime from 11:25 a.m. until 8 p.m. with PO Ross Garner and PO Ryan Galvin. They were in plainclothes and were in vehicle #8131, a black unmarked Chevy.*

Memo book

At 8:30 p.m. on July 17, 2013, PO Xylas noted a car stop and Bainbridge Street and Ralph Street. The vehicle was a green Jeep traveling northbound on Ralph Avenue. There was a foot out of the rear left passenger and there was no rearview mirror. The rear passenger also littered from the vehicle. The officers approached the vehicle and identified themselves as officers. The driver proceeded to roll down the street putting the officers in danger. The driver was ordered multiple times to stop the vehicle but he refused. PO Galvin reached into the vehicle from the passenger side and removed the keys. PO Garner and PO Xylas removed and handcuffed the driver for their safety. All passengers including three white females and one white male- were removed from the car. The vehicle was searched for weapons in the lungable areas. At 8:50 p.m. a summons was issued (encl. 5U-5V).

CCRB Statement

On December 13, 2013, PO Xylas was interviewed at the CCRB (encl. 5Z-5AA). § 87(2)(g)

PO Xylas confirmed that § 87(2)(b) moved his car and advanced 10 to 20 feet. When he approached the vehicle on the driver's side, everyone in the car, including § 87(2)(b) moved around. § 87(2)(b) right hand was below the wheel and was not visible to PO Xylas. PO Xylas thought he may be reaching for a weapon or trying to conceal a weapon. PO Xylas previously stated that § 87(2)(b) did not reach for anything. No one was smoking.

As stated by PO Garner, § 87(2)(b) did not exit the vehicle despite multiple orders and stared at the officers like he would not cooperate. PO Garner pulled him out of the car.

As soon as § 87(2)(b) was out of the vehicle, he was handcuffed. PO Xylas did not recall who handcuffed § 87(2)(b). He did not observe any bulges on § 87(2)(b). § 87(2)(b) was frisked because he was handcuffed. PO Xylas did not recall who frisked § 87(2)(b) but stated that it was only his waistband. PO Xylas escorted § 87(2)(b) behind the Jeep. Once § 87(2)(b) was handcuffed, he was compliant. § 87(2)(b) stood behind the car. PO Xylas did not sit him on the bumper of his car and did not slam him on the back of his Jeep. PO Galvin and PO Garner did not slam § 87(2)(b) on the back of his car.

PO Xylas stayed near the passengers and § 87(2)(b) but did not speak to them. He did not say that if they wanted to do things the hard way, he would take them to the precinct, or in any way threaten to arrest the passengers. He did not enter or search the car. He said that he did not know if PO Garner or PO Galvin searched the car. PO Xylas was reminded that he noted in his memo book that the vehicle was searched, and he said he did not recall who searched the car. He did not see officers look in the trunk or area behind the backseat. § 87(2)(b) was still handcuffed when the officers searched his car.

PO Xylas did not see PO Molina, PO Mancheno or PO Hernandez enter the Jeep and did not hear them threaten to arrest the civilians. No marijuana was recovered from the scene. The lit object that was thrown out the window was not recovered.

Subject Officer: PO JONATHAN MOLINA

- *PO Molina is a 5'9" tall, 180-pound Hispanic man with black hair and brown eyes. He was § 87(2)(b) old at the time of the incident.*
- *On July 17, 2013, PO Molina worked from 12 p.m. until 8:35 p.m. He was assigned to an Impact foot post and was in uniform.*

Subject Officer: PO MANUEL MANCHENO

- *PO Mancheno is a 5'9" tall, 175-pound Hispanic man with black hair and green eyes. He was § 87(2)(b) old at the time of the incident.*
- *PO Mancheno worked from 7:30 p.m. on July 17, 2013 until 4:05 a.m. the following day. PO Mancheno was in uniform and was assigned to foot post 11 on Bainbridge Street and Ralph Avenue.*

Subject Officer: PO RAYMOND HERNANDEZ

- *PO Hernandez is a 5'10" tall, 168-pound Hispanic man with black hair and brown eyes. He was § 87(2)(b) old at the time of the incident.*
- *PO Hernandez worked from 7:30 p.m. on July 17, 2013 until 4:05 a.m. the following day. He was in uniform and was assigned to foot post # 9 on Ralph Avenue from Jefferson Street to Macon Street.*

Memo book

PO Molina, PO Mancheno and PO Hernandez had no entries in his memo book regarding § 87(2)(b) (encl. 5CC-5EE , 5JJ-5LL, 5QQ-5RR).

CCRB Statement

On January 13, 2014, PO Molina was interviewed at the CCRB (encl. 5OO). On January 16, 2014, PO Mancheno was interviewed at the CCRB (encl. 5UU). On January 28, 2014, PO Hernandez was interviewed at the CCRB (encl. 5HH)

PO Molina, PO Mancheno and PO Hernandez each indicated that they conducted crowd control and did not know why the car was stopped. They saw officers enter the vehicle but could not identify them or describe the scope of the search. They each denied telling the passengers that if they wanted things the hard way, they would be taken to the precinct, and denied threatening to arrest them. They denied seeing an officer slam § 87(2)(b) on the back of his car. They denied searching any bags or seeing another officer search any bags. They each denied entering § 87(2)(b) car.

Summons/Arrest for Incident and Disposition

- The results of § 87(2)(b) summonses are unknown.

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of January 28, 2014, over three months after the filing deadline, with regard to the incident.

Civilians Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Civilians CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b) (encl. 2G-2K).

Subject Officers CCRB History

- PO Xylas has been a member of the service for four years and there are no substantiated CCRB allegations against him (encl. 2C).
- PO Garner has been a member of the service for four years and there are no substantiated CCRB allegations against him (encl. 2A).
- PO Galvin has been a member of the service for three years and there are no substantiated CCRB allegations against him (encl. 2B).
- PO Hernandez, PO Molina and PO Mancheno have each been a member of the service for less than a year and there are no substantiated CCRB allegations against them (encl. 2D-2F).

Conclusion

Identification of Subject Officers

§ 87(2)(b) description of PO1 matches PO Xylas. However, PO Garner took credit for all actions attributed to PO1. § 87(2)(g)

§ 87(2)(b) stated that officers went into her bag and recovered a bag of alcohol, § 87(2)(b) § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) did not provide official statements to the CCRB and did not describe the officers who searched their bags and threatened to arrest them. § 87(2)(b) only alleged that his bag and § 87(2)(b) bags were searched and did not allege that officers made threats of arrest. § 87(2)(g)

Allegations not pleaded

§ 87(2)(b) acknowledged that § 87(2)(b)'s foot was out of the window and that she threw a cigarette out of the window. § 87(2)(g)

Investigative Findings and Recommendations

Allegation A—Force: PO Ross Garner used force against § 87(2)(b)

Allegation B—Abuse of Authority: PO Garner searched § 87(2)(b) bags.

§ 87(2)(b) alleged that PO Garner pulled him out of the car, brought him to the back of the car and slammed him on the back of the car to handcuff him. PO Garner asked for his ID, which was in § 87(2)(b) bag in the trunk. § 87(2)(b) asked if he could retrieve it and PO Garner said no. PO Garner asked if he could get it and § 87(2)(b) said no. PO Garner took § 87(2)(b) bags from the open trunk, removed the wallet and took out his ID.

PO Garner said that he told § 87(2)(b) to get out of his car at least three times. When § 87(2)(b) was not compliant, he put his hand on § 87(2)(b) arm and told him again to exit the car. § 87(2)(b) pulled back, so PO Garner held onto his arm more forcefully and pulled him out of the car. PO Garner handcuffed § 87(2)(b) immediately and brought him to the rear of the car. He denied slamming § 87(2)(b) on the back of his car. At some point, § 87(2)(b) provided his ID. PO Garner denied entering § 87(2)(b) bags to obtain the ID.

All other interviewed officers denied seeing PO Garner slam § 87(2)(b) on the back of the car or searching § 87(2)(b) bags.

§ 87(2)(g)

Allegation C—Abuse of Authority: PO Ross Garner searched the car in which § 87(2)(b)

was an occupant.

Allegation D—Abuse of Authority: PO Ryan Galvin searched the car in which § 87(2)(b)

was an occupant.

It is undisputed that PO Galvin and PO Garner searched § 87(2)(b) car.

§ 87(2)(b) stated that § 87(2)(b) smoked a cigarette and threw the butt out of the window. § 87(2)(b) smoked a cigar. When the officers stopped him, he was still in the middle of the street and pulled ahead to park the car. The officers yelled at him and PO Garner pulled him out of the car to handcuff him. The passengers exited the car and everyone was brought to the rear of the vehicle. Officers looked under the backseat, in the trunk and in the center console.

PO Galvin's memo book stated that there was an odor of marijuana and that the car was searched for weapons. In his CCRB statement, PO Galvin stated that he thought that the littered object was marijuana. Once the car was stopped, § 87(2)(b) pulled the car forward and almost ran over PO Galvin's foot. § 87(2)(b) was handcuffed and brought to the back of the car. He did not observe any bulges on § 87(2)(b). PO Galvin searched the car because of the odor of marijuana, because § 87(2)(b) tried to drive away, and because § 87(2)(b) appeared nervous. § 87(2)(b) searched the backseat, the front passenger seat, the center console and the glove compartment. He did not try to recover the cigarette butt because there were too many on the road.

PO Garner noted in his memo book that they stopped the car because the back left passenger's feet were out of the window, the back left passenger threw a lit cigarette into the street, and that there was no rearview mirror. He noted that the driver was handcuffed for officers' safety and that he received a summons for open container of alcohol in the car. In his CCRB interview, PO Garner reiterated the reasons listed in his memo book for stopping § 87(2)(b) and added that he smelled marijuana. He confirmed that § 87(2)(b) moved the car after the officers approached the vehicle and advanced about 10 feet. He stated that everyone in the car was moving and described the movements as "furtive" but could not describe any specific movements. He did not recall if § 87(2)(b) was frisked. When § 87(2)(b) was handcuffed and moved behind his car, PO Garner searched the driver seat, and the backseat. He did not open any compartments or look under seats. He searched because he feared for his safety, because § 87(2)(b) was not compliant and because of the odor of marijuana. A canvass was conducted and it was determined that the littered object was a cigarette.

PO Xylas noted in his memo book that the car was stopped because of a foot out the window, a missing rearview mirror and for littering and that a vehicle search was conducted for weapons. In his CCRB interview, he reiterated the reasons for stopping the car noted in his memo book and added that he smelled marijuana. He confirmed that § 87(2)(b) moved forward after the car was stopped. He stated that § 87(2)(b) hand was below the wheel and was not visible. PO Xylas thought he may be trying to conceal weapons. PO Xylas also stated that § 87(2)(b) did not reach for anything. § 87(2)(b) was handcuffed, and was frisked, but PO Xylas did not know who frisked him. PO Xylas did not know who searched the car or how it was searched. The officers did not recover the lit object.

§ 87(2)(g)
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[REDACTED]
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[REDACTED]
[REDACTED]

PO Molina, PO Mancheno, and PO Molina confirmed that § 87(2)(b) car was searched but did not know why.

Traffic infractions do not warrant an arrest, and therefore do not qualify for the automobile exception that there may be probable cause that the vehicle contains evidence of the crime of which the occupant is suspected. People v. Castro-Gonzalez 9 Misc. 3d 446; 801 N.Y.S.2d 702 (2005) (encl. 1A-1B). Furtive movements combined with circumstances in which an officer could reasonably conclude that a vehicle contains weapons, justify a limited search of a vehicle in the area of the observed furtive movements. People v. Mundo, 99 N.Y.2d 55 (2002) (encl. 1X-1BB). Once an occupant is removed from a vehicle and frisked, and officers find that there is no immediate threat to their safety, there is no justification for conducting a more intrusive search of a vehicle. It is unreasonable to believe that upon being released, a person would return to the vehicle, reach for a concealed weapon and threaten the departing officers' safety. People v. Torres 74 N.Y.2d 224 (1989) (encl. 1J-1P). A passenger who bends down is not engaged in "furtive" movements and does not justify a car search. People v. Guzman 153 A.D.2d 30 (4th Dept. 1990) (encl. 1Q-1T). Vehicle occupants' nervousness when the vehicle has been stopped for a traffic infraction does not constitute founded suspicion of criminality. People v. Garcia 20 N.Y.3d 317 (2012) (encl. 1CC-1HH).

§ 87(2)(g)
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§ 87(2)(g)
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Allegation E—Abuse of Authority: PO Mark Xylas searched the car in which § 87(2)(b) was an occupant.

Allegation F—Abuse of Authority: PO Jonathan Molina searched the car in which § 87(2)(b) was an occupant.

Allegation G—Abuse of Authority: PO Manuel Mancheno searched the car in which § 87(2)(b) was an occupant.

Allegation H—Abuse of Authority: PO Raymond Hernandez searched the car in which § 87(2)(b) was an occupant.

§ 87(2)(b) stated that two plainclothes and four uniformed officers searched his vehicle.

PO Galvin and PO Garner both acknowledged searching his vehicle but could not account for other officers' actions. PO Galvin said that PO Molina, PO Mancheno and PO Hernandez only observed the car stop. PO Xylas, PO Molina, PO Mancheno and PO Hernandez denied searching § 87(2)(b) vehicle

§ 87(2)(g)

Allegation I—Abuse of Authority: PO Ryan Galvin searched § 87(2)(b) bags.

§ 87(2)(b) alleged that an officer found a bottle of alcohol in a bag, determined to belong to § 87(2)(b). He was issued a summons for § 87(2)(b) by PO Galvin.

PO Galvin stated that he recovered alcohol from the backseat of the car but denied that it was in a bag. All other interviewed officers denied seeing any bags searched during the incident. No other officer saw how the alcohol was recovered. § 87(2)(g)

Allegation J—Abuse of Authority: Officers searched § 87(2)(b) § 87(2)(b) s and § 87(2)(b) s bags.

Allegation K—Abuse of Authority: An officer threatened to arrest § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) alleged that officers searched all of their bags. § 87(2)(b) and § 87(2)(b) stated that an officer said that if they wanted to do things the hard way, they could all be taken to the precinct. § 87(2)(b) and § 87(2)(b) did not provide official statements to the CCRB. § 87(2)(b) only alleged that his bag and § 87(2)(b) bags were searched and did not allege that officers made threats of arrest. They did not describe the officers who searched their bags or who threatened to arrest them.

All interviewed officers denied searching any bags or threatening to arrest anyone. As stated above in Attempts to Contact Civilians, contact attempts were exhausted with § 87(2)(b)

and § 87(2)(b) § 87(2)(g)

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
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